IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL
Second Appeal No. 284 of 2001

1. State of U.P. Now Uttaranchal through
   Collector, Haridwar
2. Gram Sabha Kheri Mubarakpur
   Pargana Manglore
   Tehsil Roorkee
   District Haridwar ..... Appellants.

Vs

1. Balbir Singh S/o Sri Tula Singh
2. Haria, S/o Haridwari
3. Om Prakash @ Chattu S/o Haria
4. Mahesh Chander
5. Suresh Chander
   S/o Shri Haria S/o Haridwar deceased
   R/o Village Kheri
   Mubarakpur
   District Haridwar
6. Rajesh Singh S/o Haria
   R/o Village Kheri
   Mubarakpur
   District Haridwar
7. Shrimati Santosh Patni jai Kumar Sharma
   D/o Haria
   R/o Village Bhikanpur Pagan Jwalapur
   Tehsil Laksar
   District Haridwar
8. Shrimati Suresho Devi
   W/o Virendra Kumar Sharma
   D/o Haria
   R/o Village Barla Pargana Chapar
   Tehsil & Zila Muzaffarpur
9. Suresh Chander & Soma S/o Haria
10. Vedpal S/o Tala Singh
    R/o Kheri Mubarakpur,
    Pargana Manglore
    Tehsil Laksar Zila Haridwar ..... Respondents

Sri R.C. Arya, learned Standing Counsel for the State/Appellant
Sri M.S. Tyagi, learned counsel for the respondents

Hon'ble B.C. Kandpal, J.

This appeal has been filed by the appellants against the judgment and decree dated 15/16.01.2001 passed

by Additional Civil Judge(Senior Division), Roorkee, District Haridwar in Civil Appeal No. 20 of 1993 arising out of the judgment and decree dated 21-5-1993 passed by II Additional Munsif, Roorkee in Oribginal Suit No. 160 of 1982 Balbir Singh Vs. Hariya and others.

2. Brief facts of the case are that the plaintiff/respondent – Balbir Singh filed a suit before the Additional Munsif, Roorkee, for permanent injunction, restraining the defendants not to raise any construction on the suit land and also not to interfere in the peaceful possession of the plaintiff in it. The learned Munsif after hearing parties and perusing the record dismissed the suit plaintiff/respondents vide judgment and decree dated 21.05.1993.

3. Feeling aggrieved by the aforesaid judgment and decree, the plaintiff Balbir Singh and the defendants preferred appeals before the lower appellate court. The appeal filed by the plaintiff was allowed whereas that of the defendants was dismissed by the judgment and decree dated 21.5.1993 passed by Munsif Magistrate, Roorkee was set aside vide judgment and decree dated 15.1.2001.

4. Thereafter feeling aggrieved by the aforesaid judgment and decree, the State and Gram Sabhay preferred an appeal before the court below.

5. Heard Sri R.C. Arya, learned Standing Counsel for the State Sri M.S. Tyagi, learned counsel for the other side and perused the record.

6. From perusal of the record reveals that the disputed land was given to the plaintiff by the zamindar and

the possession of the land was also handed over to him. After the enforcement of U.P. Act No. 1 of 1951, the plaintiff had become owner of the disputed land on the basis of possession as well as the fact that the land was given to him by the Zamindar for which receipt was executed in his favour by the Zamindar. The witnesses produced on behalf of the plaintiff have also alleged about the devolution of the land with the plaintiff in the year 1950. The witnesses have deposed that the possession of the plaintiff on the disputed land ahs been from before the enforcement of Act No. 1 of 1951. Receipt paper No. 9-Ka/1 dated 30-6-1950 issued by Chaudhary Bharat Singh was also filed by the plaintiff in the suit.

6. having considered the arguments advanced by the learned counsel for the appellant and after perusal of the evidence on record, I am of the view that, this second appeal is concluded by finding of facts, I, therefore, do not find any ground to interfere in the impugned judgment and order passed by the lower appellate court. The lower appellate court recorded justified and proper finding of fact, which cannot be interfered at the stage of second appeal. I also do not find any substantial question of law involved in this case.

7. The second appeal lacks merit and is liable to be dismissed.

8. Accordingly, the second appeal is dismissed in-limine.

(B.C. Kandpal, J.)

02.12.2006
ASWAL